Equality and Human Rights Commission

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Minutes of the 112th meeting of the Board of the EHRC

21 June 2023 (10:00 to 14:00)
Broadway House, Tothill St, London, SW1H 9NQ

Attending

Commissioners
Kishwer Falkner (Chairwoman), Alasdair Henderson (Deputy Chair) (items 1 to 10), Arif Ahmed, Jess Butcher, Joanne Cash (items 1 to 9), David Goodhart, Kunle Olulode (items 1 to 10), Akua Reindorf, Su-Mei Thompson, Lesley Sawers

Officers
Marcial Boo, Chief Executive Officer and Commissioner ex officio
Moya Alcock, Director, Communications
Cath Denholm, Chief Operating Officer (item 9)
Ewan Devine-Kennedy, Principal, Evidence (item 10)
Melanie Field, Chief Strategy and Policy Officer (items 10 to 12)
Naomi Fawcitt, Principal, Head of Private Office
Ruth Latusek, Senior Associate, Governance Lead
Bill Malloy, Director, Finance, Governance and Planning
Katherine Perks, Joint Director, Policy and Human Rights (items 11 to 12)
Rachel Robinson, Joint Director, Policy and Human Rights (items 11 to 12)

Guests
Helen Anderson, Government Equality Hub

1. Chairwoman's welcome and apologies

1.1 The Chairwoman welcomed attendees to the meeting. Apologies for absence were received from Deputy Chair, Commissioner Eryl Besse.

1.2 The Chairwoman congratulated Arif Ahmed on behalf of the Board on his appointment to be the first Director for Freedom of Speech and Academic Freedom and sit on the Board of the Office for Students (OfS). She advised that Arif would leave EHRC's Board on 11 August and she thanked Arif for his impactful contributions during his term of office.

1.3 The Chairwoman advised that Jackie Killeen, Chief Regulator, will be leaving EHRC on 23 June following a three-year secondment. She thanked Jackie on behalf of the Board for leading our regulatory work and particularly the social care inquiry report.

2. Declarations of interest

2.1 Alasdair Henderson declared that he has been appointed for a fixed term as an independent expert to the advisory panel on Relationships, Sex and Health Education (RSHE), which presents a conflict of interest in any discussions about RSHE.

2.2 Arif Ahmed advised that his appointment as Director for Freedom of Speech and Academic Freedom presents a conflict of interest for any discussions regarding the OfS and the Higher Education (Freedom of Speech) Act.

2.3 Arif Ahmed declared an interest because he was a colleague of an MP at Gonville & Caius College whilst the latter was pursuing a course at the University of Cambridge in 2021-22. Consequently, Arif recused himself for the discussion at paragraph 6.5.

2.4 For transparency, Joanne Cash noted that she had recently been among a group of business leaders to be consulted by the office of the Shadow Chancellor on business matters. Joanne had left the meeting before Item 10, where policy protocols for EHRC engaging pre-election were discussed, and so no conflict of interest materialised.

3. Minutes of the 111th Board meeting

3.1 The Board approved the minutes of the meeting of 16 May as an accurate record. They noted the summary of the joint Board and Scotland Committee meeting.

4. Actions arising

4.1 The Board noted the action log.

4.2 The Chairwoman advised that she had received a sample of the new digest of EHRC's policy positions, and that she would discuss it with the Chief Strategy and Policy Officer (CSPO). The CEO confirmed that the digest would be available to Commissioners and staff, including the Communications team.

Action: Private Office to arrange a meeting for the Chairwoman, CSPO and CEO to discuss the new digest of EHRC's policy positions.

4.3 The Chairwoman advised that she is content that everything is in hand and will be covered at this or future meetings and that the actions proposed for completion will be complete by the end of this meeting.

5. Committee and Commissioner Working Group updates

5.1 The Chair of the Audit and Risk Assurance Committee (ARAC) advised that ARAC met on 25 May for a review of the Annual Report and Accounts. He advised that ARAC had a formal meeting on 8 June. The Committee discussed and made comments on a further iteration of the Annual Report and Accounts, which the Board will discuss at Item 9. ARAC also discussed ongoing risks and issues faced by EHRC and what assurance ARAC may wish to provide the Board; considered the Board Effectiveness Review, at the request of the Board, and suggested a further update to ARAC after an internal review at the mid-point for delivery; agreed that more alignment between ARAC and the People and Workspace Committee (P&WC) would be valuable, including clarity on roles and responsibilities in assurance between these committees and the Board; and decided to move ARAC's July and October meetings to September and December to provide better opportunity for assurance on progress against in-year delivery, budgets and risk.

5.2 A Member of the P&WC, on behalf of the Committee Chair, advised that P&WC met on 14 June. The Committee noted that progress is being made across all areas of the 'Building Our Commission' improvement programme, with work on corporate values postponed; reviewed options for estates to help develop a strategy that will come to the September Board meeting, and advised that the current hybrid working model is likely to remain appropriate, that presence is needed in all three nations with greater focus on our Manchester head office, smaller offices and more meeting rooms; received assurance that speaking up channels are in place for staff to raise concerns, but agreed that the processes for dealing with concerns regarding Board Members will be reviewed by ARAC. She advised that the next meeting of P&WC would be 19 September.

5.3 The Chair of the Human Rights Monitoring Commissioner Working Group (CWG) advised that the CWG met on 15 June for a formal meeting and strategy workshop. In the formal meeting, Members reviewed the draft submission to the UN Committee on the Rights of Persons with Disabilities;

discussed the approach to contributing to the Istanbul Convention baseline evaluation process; and considered how to take forward the Board's steer on the evolution of the Human Rights Tracker. At the strategy workshop, Members considered the strategy for EHRC's human rights treaty monitoring work and agreed to focus more on pursuing the implementation of recommendations made by the UN Committees and seek to influence international standards setting. The Chair also advised that the team are supporting the Joint Committee on Human Rights in Parliament and its engagement with the Government on following up the recent Universal Periodic Review and preparing a submission to the Council of Europe's Commission on Racism and Intolerance ahead of their monitoring visit to the UK in November.

5.4 The Scotland Commissioner advised that the Scotland Committee has not met since the last Board meeting, as the 1 June meeting was cancelled, but Members have received papers on relevant items by correspondence. She noted that Lindsey Millen resigned from the Committee on 8 June. She advised that recruitment for three vacancies is ongoing, and the intention is to have new members in place by the next Committee meeting on 7 September.

5.5 The CEO, on behalf of the Wales Commissioner, advised that the Wales Committee met on 7 June. The Committee noted the statutory report for Wales and discussed the recommendations, key findings and how the report would be promoted in Wales; and discussed diversity in Public Appointments with officers from Welsh Government's Public Appointments team. He advised that there would be a development session in July and a formal meeting in September.

6. CEO Report and Chairwoman's update

6.1 The Board noted the CEO report.

6.2 The Board agreed that there should be follow up to the Chairwoman's letter of 23 May to Victor Madrigal-Borloz, UN Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity. Commissioners advised that they were disappointed that Mr Madrigal-Borloz had not responded to the letter and that we should continue to challenge the misrepresentation of the EHRC's position in his end-of-mission statement. They agreed to publish the letter on the EHRC website. Helen Anderson from the Government Equalities Office was asked about escalating EHRC's concerns if they continue to be unaddressed by Mr Madrigal-Borloz.

Action: CSPO to draft a follow up letter to Victor Madrigal-Borloz, requesting a response to the Chairwoman's letter of 23 May, and ensure it is published on our website.

6.3 The Board agreed to write to Reem Alsalem, UN Special Rapporteur on violence against women and girls, to offer an online meeting as they had not been engaged with the Special Rapporteur when she was in the UK. The Chairwoman requested that a read out of upcoming foreign visitors coming to

the UK, such as UN Officials and National Human Rights Institutions, is circulated to Commissioners on a rolling basis.

Action: CSPO to draft a letter to Reem Alsalem offering an online meeting with the Chairwoman and Commissioners.

6.4 The Chairwoman advised that, at the Board's private session earlier, at which all bar two Commissioners had been present, it had been agreed, following a recommendation at a private session of ARAC on 8 June, to establish an independent inquiry into the recent leaks to some media outlets. It was noted that Commissioners agreed that Lesley Sawers, Commissioner, would lead the investigation on behalf of the Board, with Kunle Olulode, as Chair of ARAC, consulted as appropriate. It was also agreed that the Director of Finance, Governance and Planning would support the lead Commissioner with the scoping and implementation of the investigation.

Action: Director of Finance, Governance and Planning to scope and coordinate a leak inquiry with Lesley Sawers and in consultation with Kunle Olulode as appropriate.

6.5 The Board discussed potential race discrimination in the arts, on the basis of a complaint from parliamentarians, and agreed to explore this particular incident further.

Action: Director of Legal Litigation and Enforcement to look into the details of the alleged race discrimination in the arts and advise the Chairwoman.

6.6 Commissioners supported opening the Race Legal Fund to unrepresented individuals. They cautioned that, with resources being limited, EHRC may receive more applications than can be funded. The CEO advised that the Director of Communications will ensure stakeholder communications are targeted. Commissioners were advised that EHRC had not received additional funding from Government for this work, notwithstanding the recommendations from the report of the Commission on Race and Ethnic Disparities, and the commitment in the Government's Inclusive Britain report and that we will continue to raise this with the Government.

6.7 The Chairwoman advised rescheduling the update on the review of the Services Code of Practice from the September Board meeting to October, so that any decisions can be informed by intelligence from the King's Speech and Government's new programme. The CEO assured Commissioners that they would be fully sighted before the Code of Practice goes to public consultation.

6.8 The Board's Commissioner with lead responsibility for disability issues requested to be more engaged in EHRC's work and in particular on issues to do with disabled people's travel arrangements following recent meetings with transport regulators.

Action: CSPO to ensure the Board's Commissioner with lead

responsibility for disability issues is briefed on EHRC's work on disability.

6.9 Commissioners decided that EHRC should engage with the Protection from Sex-based Harassment in Public Bill as it goes into Committee stage in the House of Lords.

Action: Private Office to circulate information on the Protection from Sex-based Harassment in Public Bill to all Commissioners.

7. Annual Report and Accounts and governance statement 2022-23 and ARAC annual report 2022-23

7.1 The Board approved the Annual Report and Accounts, subject to agreed amendments, for final sign-off by the CEO and Chairwoman. They noted the ARAC annual report for 2022-23.

7.2 The Chair of ARAC gave thanks to the Director of Finance, Governance and Planning and colleagues.

7.3 Several detailed drafting comments from Commissioners on the report were noted for inclusion. Specific questions were asked in relation to the remuneration of Commissioners and to the use of anonymising software in recruitment processes.

Action: Director of Finance, Governance and Planning to include a review of remuneration for Commissioners as part of the regular review of governance documents and discuss with P&WC.

Action: Director of People and Infrastructure to discuss the use of recruitment software with P&WC.

7.4 The Chairwoman noted that questions had been raised by a statutory committee member about the applicability of the 'Corporate Governance in Central Government Departments: Code of good practice'. The Chairwoman asked if this was applicable to EHRC and suggested that, if so, we may need to review this with the Cabinet Office. The Director of Finance, Governance and Planning provided assurance that the Code applies to all Arms-Length Bodies and that it is referenced in Commissioner appointment letters from the Cabinet Office.

Action: Director of Finance, Governance and Planning to provide further details to the Chairwoman on the 'Corporate Governance in Central Government Departments: Code of good practice' being applicable to EHRC.

8. 'Equality and Human Rights Monitor' – Our Statutory Report to Parliament

8.1 The Board approved the content of the statutory report subject to agreed amendments. They agreed to delegate to the CEO formal sign off the main report, the executive summary, and the Scotland and Wales reports. They noted that the CEO will keep the Chairwoman, Chair of the Statutory Report CWG and the Scotland and Wales Commissioners informed of significant changes and developments.

8.2 The Chairwoman gave special thanks to the Chair of the Statutory Report CWG, CSPO, the Head of Data and Evidence, Principal of Evidence and the Communications team for the report.

8.3 The Scotland Commissioner advised that there were no comments from the Scotland Committee and that there are strong links between the main report and Scotland report. The CSPO, on behalf of the Wales Commissioner, advised that comments from the Wales Committee had been incorporated into the report provided to the Board.

8.4 Comments and observations from Commissioners included:

a) the suite of products and how they are tailored to different audiences look excellent;
b) to rename the 'cross-cutting issues' section with a title to the effect of 'external context' or 'common themes', and to review the opening paragraph;
c) to explain that the protected characteristics of pregnancy and maternity and marriage and civil partnership are covered under the sex chapter;
d) to consider providing more granularity on pre- and post- Covid data where possible or, if not available, to note the data gaps;
e) to review the use of the terms 'sex' and 'gender' throughout the report to ensure accuracy; and
f) to explain that census data is from the Office for National Statistics and to note protected characteristics with lower agreement survey rates.

8.5 Commissioners were asked to provide final comments on the main report by 30 June and on the executive summary of the report by 3 July.

8.6 The Chairwoman requested that hard copies of the final report are provided to all Commissioners.

Action: CSPO to ensure hard copies of 'Equality and Human Rights Monitor' are provided to all Commissioners.

9. UN Treaty Incorporation

9.1 The Board approved the proposed approach to UN treaty incorporation. They advised engaging closely with legislative processes in Scotland and with consultation and legislative development in Wales, and to actively engage with the Scotland and Wales Commissioners and Committees. The Board decided that a meeting with Commissioners from the Scottish Human Rights Commission (SHRC) should be arranged soon.

Action: Governance team to arrange a meeting with the Board and SHRC

Commissioners as soon as practicable.

9.2 Commissioners supported conducting a gap analysis of the rights incorporated in the domestic legal framework and the effectiveness of implementation. They advised considering international comparators with countries that have a similar GDP, population and democratic governance as the UK.

9.3 The Chairwoman advised that longer-term approaches to our human rights work should consider an evaluation of the outcome of incorporation in Scotland before coming to a view on incorporation for the rest of the UK. It was noted that this will be part of Board discussions in October about our next corporate strategy for 2025-28.

10. Policy protocols for the EHRC engaging pre-election

10.1 The Board noted the proposed approach to policy engagement before the next General Election. They advised taking a three-nations approach to engaging across political parties, and that Scotland and Wales Committee members have networks and expertise that can be drawn on. They supported ensuring that staff are aware of the need to implement Cabinet Office guidance during the formal pre-election period of sensitivity.

11. AOB

11.1 The Chairwoman advised that the next Board meeting will be held in person in London on 14 September.

11.2 The Board noted the Forward Schedule and the minutes from the ARAC meeting.

11.3 With no other business, the Chairwoman closed the meeting.